A.F.R.

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**HIGH COURT OF CHHATTISGARH AT BILASPUR**

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**Single Bench : Hon'ble Shri Vijay Kumar Shrivastava, J.**

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**Writ Petition No. 1410 of 2005**

**Masatram**

**Versus**

**Rameshwar Prasad & Others**

**ORDER**

**Post for 10-01-2007**

**Sd/-**
**V.K.Shrivastava**
**Judge**

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**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Single Bench : Hon'ble Shri Vijay Kumar Shrivastava, J.**

**Writ Petition No. 1410 of 2005**

PETITIONER : Masatram, son of Behra, Caste Naganshi, aged about 46 years, resident of Village Ludeg, Tehsil Pathalgaon, District Jashpur (CG).

**Versus**

RESPONDENTS :

1. Rameshwar Prasad, son of Bajru, Caste-Uraon, resident of Ludeg, Tehsil Pathalgaon, District Jashpur (CG).
2. Shakuntala Devi, wife of Shri Dilip, Caste Kanwar.
3. Reemeesh Tirkey, son of Mohana, Caste Uraon.
4. Dhansingh, son of Shri Bhagatram, Caste Nagvanshi.
5. Ganpat, son of Jodhan, Caste Nagvanshi.
6. Tobiyas, son of Francis, Caste Uraon.
7. Pramod, son of Alousis, Caste Uraon.
8. Simon, son of Bhartisai, Caste Uraon.

   No. 2 to 8 are residents of Ludeg, Tehsil Pathalgaon, District Jashpur (CG).
9. Shri Hemnarayan, Presiding Officer, Booth No.141, village Primary School, Bhumara, Tehsil Kunkuri, Dist. Jashpur (CG).
10. Shri Devcharan Ram, Presiding Officer, Booth No.142, village Primary School, Jloodwine, Tehsil Kunkuri, Dist. Jashpur (CG).

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11. Shri Margin Khalkho, Presiding Officer, Booth No.143, Village Kunkuri, Tehsil Kunkuri, Dist.Jashpur (CG).
12. Shri Vincent Minj, Presiding Officer, Booth No.144, Village Pakarmugar, Tehsil Kunkuri, District Jashpur.
13. Shri Santosh Kumar Patel, Presiding Officer, Booth No.145, Village P.W.D. Kunkuri, Tah; Kunkuri, Dist. Jashpur (CG).
14 Shri D.R. Nirala, Presiding Officer, Booth No.146, Primary School, Chheridand, Tah-Kunkuri, Dist. Jashpur (CG).
15. State of Chhattisgarh, through the Secretary, Department of Panchayat, D.K.S. Bhawan, Raipur.
16. The Sub Divisional Officer, Tehsil Pathalgaon, Dist. Jashpur.
17. The Returning Officer, Gram Panchayat Election, Pathalgaon.

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**Present :-**

Ku. Sharmila Singhai, counsel for the petitioner.

Shri Ravish Chandra Agrawal, Sr. Advocate with Shri Sanjay S. Agrawal, counsel for the respondent No.1.

Shri Parag Kotecha, counsel for respondents No.2, 3, 6 & 7.

Shri Sunil Sahu, counsel for respondents No.4, 5, 8, 9, 10, 11, 12 & 14.

None for respondent No.13.

Ku. Deepali Pandey, Panel Lawyer for the State/respondents 15, 16 & 17.

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**ORDER**

**(Passed on 10th January, 2007)**

Prescribed Authority (Panchayat) Pathalgaon, while trying the election petition bearing No.2/A-89/2004-05 vide impugned order dated 18-3-2005 directed for recounting of votes and after recounting vide

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impugned order dated 20-3-2005 declared respondent No.1/Rameshwar Prasad duly elected for the post of Sarpanch of Gram Panchayat Ludeg, in place of petitioner/Masatram. Feeling aggrieved this writ petition under Article 226/227 of the Constitution of India.

2) In nutshell, the facts of the case are that elections for various posts of Gram Panchayat Ludeg, District Jashpur were held. Petitioner and respondents No.1 to 8 contested the election for the post of Sarpanch. Petitioner secured 612 votes whereas respondent No.1 secured 585 votes. After counting petitioner was declared as elected Sarpanch and accordingly a certificate was issued in his favour.

3) Feeling aggrieved respondent No.1 instituted an election petition under Section 122 of the C.G. Panchayat Raj Adhiniyam, 1993 (for brevity "Adhiniyam, 1993") before the Prescribed Authority, *inter alia*, pleading that the Presiding Officer did not allow to peruse the votes which are declared invalid, no proper light arrangement was there and Presiding Officer in order to allow undue advantage to the petitioner has declared 20% of the valid votes as invalid and also did not give counting slips to any of the contestants or their agents; even written complaint was made to the Returning Officer, but that was remained a futile exercise. Therefore, respondent No.1 sought relief of recounting of votes.

4) Respondents No.2, 3, 4, 5 & 7 supported the claim of respondent No.1. The Presiding Officers/respondents No. 9, 11, 12 & 14 opposed the application and stated that fair and independent counting has been conducted, valid and invalid votes have been shown to the contestants, no one raised any objection. Proper light arrangement was there and counting

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slips were provided to those agents who were present during counting of votes.

5) Petitioner contested the petition, *inter alia*, on the ground that respondent No.1 did not lodge any complaint or raised any objection during counting; each ballot paper has been shown to candidates and their agents. Polling and counting has been conducted in accordance with rules. No application was made to the Returning Officer and the petition filed by respondent No.1 is not maintainable.

6) Petitioner during trial filed an application for taking evidence, but the Prescribed Authority did not allow it and turned down the same and in order to determine the mischief committed during the course of counting, passed an order to recount and thereafter on 20-3-2005 after recounting declared respondent No.1 as an elected candidate.

7) Learned counsel for the petitioner contended that the application filed by respondent No.1 under Section 122 of the Adhiniyam, 1993 does not fall within the category of election petition, therefore, neither trial of the election petition was possible nor in absence of any competent election petition recounting of votes can be ordered, her emphasis was that respondent No.1 only made a prayer for recounting of votes and did not claim relief in accordance with Rule 6 of the M.P./C.G. Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (henceforth, "Rules 1995") On the other hand, learned counsel for respondent No.1 vehemently opposed the same and relying on the judgment rendered by Hon'ble Apex Court in the matter of **Rupadhar Pujari Vs.**

**Gangadhar Bhatra**[1] contended that though his election petition is not very happily worded, yet he is entitled for relief of declaration of returned candidate void and further declaration that he is duly elected.

8) Rule 6 of Rules, 1995 reads as below:

> "**6. Relief that may claimed by the petitioner:-** A petitioner may claim-
>
> (a) a declaration that the election of all or any of the returned candidate is void; and
>
> (b) in addition thereto, a further declaration that he himself or any other candidate has been duly elected."

9) Hon'ble the Apex Court in the mater of **Rupadhar Pujari (supra[1])** has held as below:

> "The relief clause in the election petition in the present case was not very happily worded. However, one cannot be oblivious of the fact that panchayat elections are part of Gram Swaraj system. Most of the provisions relating to election and election petitions in the laws governing Panchayats are in *pari materia* with the provisions contained in the Representation of the People Act, 1951. Yet the procedural laws relating to panchayat elections and election petitions cannot be allowed to be interpreted with too much rigidity and by indulging in hair-splitting."

10) From legislation and law laid down by Hon'ble the Apex Court in the aforesaid case, it is clear that although in election petition arising out of Panchayat elections, interpretation with too much rigidity cannot be allowed yet in sum and substance, it must fall within the *pari materia* of election petition.

11) For proper appreciation, the petition instituted by respondent No.1 is reproduced below:

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[1] (2004) 7 SCC 654

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1. यह कि 23 जनवरी 2005 को होने वाले पंचायत चुनाव में आवेदक लुडे.ग ग्राम पंचायत में सरपंच पद का प्रत्याशी था । जिन्हें अनाज बरसाता किसान चुनाव चिन्ह आबन्टित किया गया था।

2. यह कि 23.1.2005 को मतदान पश्चात मतगणाना प्रारंभ हुई उक्त मतगणना कार्य में असमाजिक तत्वों द्वारा मेरे पक्ष के मत पत्रों को अवैध करवाया गया।

3. यह कि ग्राम पंचायत लुडे.ग में सरपंच हेतु कुल पडे मतों का 20%मत अवैध घोसित किया गया।

4. यह कि इस संबंध में मेरे द्वारा संबोधित पीठासीन अधिकारीयों के समक्ष आपत्ति दर्ज कराई गइ जिसे पीठासीन अधिकारीयों ने नकार दिया गया।

5. यह कि आवेदक को मतगणना पत्रक पीठासीन अधिकारीयों द्वारा मतगणना केन्द्रों पर नहीं दिया गया।

6. यह कि ग्राम पंचायत लुडे.ग के सरपंच पद के मत पत्रों (वैध और अवैध) की जांच कर पुर्नगधना कराना न्याय हित में आवश्यक है।

अतः श्रीमान जी से निवेदन है कि ग्राम पंचायत लुडेग के सरपंच के मतगणाना में व्यापक अनियमितता बरती गई है जिससे वैध एवं अवैध मत पत्रों की जांच कर पुर्नमतगणना करने की कृपा करें

12) **From bare reading of the petition, it is clear that this is not an election petition, but merely subsequent application for recounting of votes, election petition and application for recounting of votes are not one and the same. Therefore, the instant petition itself was not an election petition, hence the Prescribed Authority was not competent to declare the election of the returned candidate void or to declare the respondent No.1 as an elected candidate.**

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13) Niyam 80 of MP/CG Panchayat Nirvachan Niyam, 1995 (henceforth, "Niyam 1995) is reproduced below :

> "**80. Recount of Votes** : (1) After an announcement has been made by the Returning Officer or such other officer authorized by him, of the total number of votes polled by each candidate under sub-rule (2) of rule 77, a candidate or, in his absence, his election agent or his counting agent may apply in writing to the Returning Officer or such officer authorized by him, for a recount of all or any of the votes already counted, stating the grounds on which he demands such recount.
>
> (2) On such an application being made the Returning officer or such other officer authorized by him shall decide the matter and may allow the application in whole or in part or may reject it in toto if it appears to him to be frivolous or unreasonable.
>
> (3) Every decision of the Returning Officer or such other officer authorized by him, under sub-rule (2) shall be in writing and contain the reasons therefor.
>
> (4) If the Returning Officer or such other officer authorized by him, decides under sub-rule (2) to allow an application either in whole or in part, he shall--
>
> (a) count the ballot papers again in accordance with his decision;
>
> (b) amend the result sheet to the extent necessary after such recount; and
>
> (c) announce the amendment so made by him.
>
> (5) After the total number of votes polled by each candidate has been announced under sub-rule (2) of rule 77 or sub-rule (4) the Returning Officer or such other officer authorized by him shall complete and sign the result sheet and no application for a recount shall be entertained thereafter :
>
> Provided that no step under this sub-rule shall be taken on the completion of the counting until the candidates and election agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by sub - rule (1).
>
> (6) The counted ballot papers shall be bundled and kept in the manner mentioned in sub-rule (3) of rule 77.

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> (7) Result sheets in Form 16, 17, 18 and 19 for Panch, Sarpanch, Member of Janpad Panchayat and Member of Zila Panchayat respectively, prepared by such other officers as are authorized by the Returning Officer, shall be submitted by them, in separate envelopes to the Returning Officer for compilation and tabulation of votes polled by each candidate.
>
> (8) The Returning Officer on receipt of result sheets under sub-rule (7) shall enter of cause to be entered the total number of votes polled by each candidate contesting for a seat of Sarpanch, Member of Janpad Panchayat or Member of Zila Panchayat at each polling station of the concerned constituency in subsequent part or parts of Form 17, 18 and 19 respectively and complete and sign the result sheet."

14) The Hon'ble Apex Court rending judgment in the case of **Sohan Lal vs. Babu Gandhi and others**[2] held as below :

> "After declaration of results; the Returning Officer has no power either to direct re-count or to change the results of the election. Once the result is declared, the only remedy for an aggrieved party is an election petition under Section 122. In such a case, the court or the tribunal is bound to consider the plea and where a case is made out, it may direct re-count depending upon the evidence led by the parties. It is not correct to hold that in an election petition, after the declaration of the result, the court or tribunal cannot direct re-counting of votes unless the party has first applied in writing for re-counting of votes. There is no prohibition in the Act or under the Rules prohibiting the court or tribunal to direct a re-counting of the votes. Even otherwise, a party may not know that the re-counting is necessary till after the result is declared. At this stage, it would not be possible for him to apply for re-counting to the Returning Officer. "

15) From the legislation and law laid down by the Hon'ble Apex Court it is clear that candidate contesting the election during counting of votes at an appropriate stage, but before declaration of results, has right to ask for recounting on valid grounds and thereafter he has right to claim recounting by filing election petition. Therefore, so far as jurisdiction to pass orders

[2] (2003) 1 SCC 108

for recounting during pendency of election petition is concerned, the same exists and if any candidate did not ask for recounting during counting in accordance with Niyam 80 of Niyam, 1995, he is not debarred to ask for recounting after filing of election petition.

16) Here in the instant case, though an application addressed to the Returning Officer has been introduced by respondent No.1, but in that application he did not mention the date when it was made, even some one who put his note also did not mention the date of presentation of application or date below his initial. Here it is not out of place to mention that if this application was made to the Returning Officer it should have been in the file of election proceedings, how this application, if endorsed by any of the election officer, came to the custody of respondent No.1, has not been explained. It is evident from its bare reading that this application was made after declaration of the result and the Returning Officer or any officer authorized by him was not empowered to direct for recounting of votes after declaration of result.

17) Learned counsel for respondent No.1 vehemently contended that once the recounting has been ordered and recounting has been completed, the Court cannot refuse to give effect to its result and to support his contention, placed his reliance in judgment rendered by the Hon'ble Apex Court in the matter of **T.A. Ahammed Kabeer vs. A.A. Azeez and others**[3]. On the other hand, learned counsel for the petitioner contended that if the order passed by the Prescribed Authority for recounting is in

[3] (2003) 5 SCC 650

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contravention of prescribed and settled norm on such a recount its result cannot be given effect to and placed her reliance in the judgment of the Hon'ble Apex Court in the matter of **Vadivelu vs. Sundaram and others**[4]. Law laid down by the Hon'ble Apex Court in both the above cases are reproduced below :

> "**T.A. Ahammed Kabeer (supra[3]) :** It is true that a re-count is not to be ordered merely for the asking or merely because the court is inclined to hold a re-count. In order to protect the secrecy of ballots the court would permit a re-count only upon a clear case in that regard having been made out. To permit or not to permit a re-count is a question involving jurisdiction of the court. Once a re-count has been allowed the court cannot shut its eyes to the result of re-count on the ground that the result of re-count as found is at variance with the pleadings. Once the court has permitted re-count within the well-settled parameters of exercising jurisdiction in this regard, it is the result of the re-count which has to be given effect to."
>
> "**Vadivelu (supra[4]) :** The Supreme Court has consistently taken the view that re-count of votes could be ordered very rarely and on specific allegation in the pleadings in the election petition that illegality or irregularity was committed while counting. The petitioner who seeks re-count should allege and prove that there was improper acceptance of invalid votes or improper rejection of valid votes. If only the court is satisfied about the truthfulness of the allegation, it can order re-count of votes. Secrecy of ballot has always been considered sacrosanct in a democratic process of election and it cannot be disturbed lightly by bare allegations of illegality or irregularity in counting. But if it is proved that purity of elections has been tarnished and it has materially affected the result of the election whereby the defeated candidate is seriously prejudiced, the court can resort to re-count of votes under such circumstances to do justice between the parties.

18) In Rules 1995, rule 5 prescribes contents of the petition which reads as below:

> "5. Contents of the petition.- An election petition shall-
>
> (a) contain a concise statement of all material facts on which the petitioner relies;

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[4] (2000) 8 SCC 355

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(b) set forth with sufficient particulars, the grounds on which the election is called in question:

(c) be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure 1908 (V of 1908), for the verifications of pleadings."

19) From the above legislation and law laid down by the Hon'ble Apex Court in the aforesaid cases, it is held that in election petitions when recount is claimed that cannot be allowed merely on the ambiguous allegations, but party claiming recount has a heavy duty to plead complete details and thereafter to prove his allegations. An order of recounting of votes can be passed on specific pleading and its proof and when a clear case for recounting is, prima facie, established well within parameter for recounting of votes.

20) Here in the instant case, it was alleged that the Presiding Officer did not allow to peruse the valid votes which are declared invalid, no proper light arrangement was there and Presiding Officer in order to provide undue advantage to the petitioner has declared 20% of the valid votes as invalid and also did not give counting slips to any of the contestants or their agents; even written complaint was made to the Returning Officer, but that was remained futile exercise. So far as trial is concerned, for determining the correctness of allegation, the same was required to be tried in accordance with the Code of Civil Procedure, but without trying the dispute without considering the nature of the pleading and without there being evidence to support the correctness of allegations, the Prescribed Authority illegally ignoring the well settled parameters, has exercised jurisdiction by directing recounting of votes, therefore, not only the impugned order dated

18-3-2005 directing recounting of votes is illegal even consequent to that another impugned order dated 20-3-2005 is also illegal.

21) In the result, the petition is allowed. Both the impugned orders dated 18-3-2005 and 20-3-2005 passed by the Prescribed Authority are quashed and accordingly the election petition instituted by respondent No.1 is rejected. No costs.

Sd/-
V.K.Shrivastava
Judge

Raju